IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THOMAS HAEFNER, JR. and YVETTE HAEFNER, H/W	:	
Plaintiffs,	:	CIVIL ACTION
v.	:	NO. 03-4495
CITY OF PHILADELPHIA, et al	:	
Defendants.	:	

MEMORANDUM

GREEN, J. **March 4, 2005**

Presently before this court are the Defendants' Motion for Summary Judgment, Plaintiffs' Motion for Partial Summary Judgment, and the oppositions and replies thereto. Plaintiffs Thomas Haefner, Jr. and Yvette Haefner filed this action against Defendants City of Philadelphia, and individual Defendants Edward McLaughlin, Robert D. Solvibile, Jr., and Daniel Quinn.[1]

I. Statement of Facts

Plaintiffs are the owners of 6239 Lawnton Street (the "property") located in the Roxborough section of Philadelphia. In Plaintiffs' family since 1900, the Haefners inherited the

[1]The Defendants at this time are the City of Philadelphia, Edward McLaughlin, Robert Slovibile, and Daniel Quinn. Plaintiffs' original complaint named other L&I employees namely: Eileen Evans, Harry Shugar, Albert McCarthy, Abdul Abdullah, William Wolstenholm, and Andrea Swan. Plaintiffs' consented to a grant of summary judgement in favor of said former defendants on August 19, 2004.

property from a maiden aunt in 1998 but did not reside in the home. On three separate occasions, employees from Licenses and Inspections ("L&I") entered the home to inspect and on the second occasion perform a clean and seal without notice to the Plaintiffs or a warrant. On the third occasion employees entered the home and removed a generator. Plaintiffs claim these invasions violated Plaintiffs' constitutional rights.

Defendants have filed a motion for summary judgment and Plaintiffs have filed a motion for partial summary judgment.

III. Discussion

Plaintiffs are suing the city of Philadelphia, a department head of Licences and Inspections ("L&I"), and other L&I employees subject to the direction of the aforesaid for money damages pursuant to 42 U.S.C. §1983. Plaintiffs' 1983 claims allege that Plaintiffs have a right to recovery because of a violation of their constitutional rights. Plaintiffs allege that Defendants illegally entered their property on three occasions without obtaining a warrant or an Order of Court to enter, and without first providing a hearing or any prior notice of their intent to do so, in violation of Plaintiffs Fourth and Fourteenth Amendment rights. Plaintiffs also contend that Defendants targeted Plaintiffs for political reasons and continued to cite Plaintiffs for non-existent or minor Code violations in retaliation for filing an appeal in opposition to the Defendants first unlawful entry. Plaintiffs claim the arbitrary and improperly motivated actions violated their procedural and substantive due process rights. Plaintiffs aver that Defendants engaged in selective enforcement of Code regulations denying Plaintiffs equal protection of the law. Plaintiffs argue that upon entering Plaintiffs' property, Defendants removed and destroyed furniture, family mementos, and personal property including, on the third entry, a power

generator being used by Plaintiffs to correct Code violations cited by the City. The City contends the third entry was necessary to remove hazardous gasoline stored on the premises to fuel the generator. For the harm and damages allegedly incurred by the Plaintiffs, Plaintiffs are requesting compensatory damages, exemplary damages, counsel fees and costs of litigation.

Defendants have moved for summary judgment on all counts of the complaint because (1) Plaintiffs failed to establish a viable cause of action under 42 U.S.C. §1983; (2) Defendant Edward McLaughlin cannot be held liable, since he had no personal involvement in the incident at issue in this case; and (3) Defendants Solvibile and Quinn are entitled to summary judgment under the doctrine of qualified immunity. Plaintiffs have moved for partial summary judgment on the Fourth Amendment claims against the City, McLaughlin, Solvibile, and Quinn.

First, I address Defendants Solivible and Quinn's motion for summary judgment under the doctrine of qualified immunity. In a suit against an officer for an alleged violation of a constitutional right, the requisites of a qualified immunity defense must be considered in proper sequence. Where the defendant seeks qualified immunity, a ruling on that issue should be made early in the proceedings so that the costs and expenses of trial are avoided where the defense is dispositive. Qualified immunity is "an entitlement not to stand trial or face the other burdens of litigation." Mitchell v. Forsyth, 472 U.S. 511, 526 (1985). The privilege is "an *immunity from suit* rather than a mere defense to liability; and like an absolute immunity, it is effectively lost if a case is erroneously permitted to go to trial." Saucier v. Katz, 533 U.S. 194, 200-201 (2001). A court required to rule upon a qualified immunity issue must consider this threshold question: Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer's conduct violated a constitutional right? This must be the initial inquiry. Siegert v. Gilley,

500 U.S. 226, 232 (1991).

If there is no constitutional violation established by the allegation, the inquiry regarding qualified immunity ends. On the other hand, if a constitutional violation is found, the next, sequential step is to ascertain whether the right was clearly established. Id. This inquiry, it is vital to note, must be undertaken in light of the specific context of the case, not as a broad general proposition; and it too serves to advance understanding of the law and to allow officers to avoid the burden of trial if qualified immunity is applicable. Saucier v. Katz, 533 U.S. 194, 201 (2001).

Qualified immunity protects government officials when the government's "conduct does not violate clearly established constitutional rights of which a reasonable person would have known." In 1967, the United States Supreme Court refused to find a distinction between an "inspection" and a "search" and held that a warrant is required upon a home inspection even when the home inspection is part of a routine regulatory scheme. Camera v. Municipal Court, 387 U.S. 523, 526 (1967). In Maffucci v. of City of Philadelphia, Judge McGirr Kelly discussed Camera and held that absent consent, the building code inspector must obtain an warrant supported by probable cause to search plaintiff's home for permit violations. Defendant McLaughlin was a named defendant in the Maffucci case. Maffucci v. City of Philadelphia, 1999 WL 320940 (E.D.Pa.). Defendants McLaughlin and Solivible knew or should have known after Camera and Maffucci that, absent exigent circumstances, a warrant is required by the Fourth Amendment for an administrative search. It is well- established that when a city inspector without consent or court authorization enters a property for purposes of inspecting for Code violations a constitutional violation is found. L&I employees also had the benefit of a

Philadelphia Administrative Code regulation enacted after Camera which requires a warrant prior to entering a property without consent.[2] In addition, the City conducted a training session in October 2001 to train employees on the requirement of a warrant. Thus, I conclude the constitutional violation is clearly established and a reasonable person would have known, in the circumstances present, of the requirement of consent or court authorization prior to entering the premises unless exigent circumstance existed. Accordingly, I deny the motion for summary judgment on that ground.

I turn to the Defendant City's argument that the Plaintiffs' 1983 claims fail because the Plaintiffs must prove that Plaintiffs rights were violated due to a municipal policy or custom of deliberate indifference to Plaintiffs rights. Local governments may be sued under 42 U.S.C. § 1983 for constitutional deprivations pursuant to governmental policy or custom, but municipalities cannot be held liable "solely because it employs a tortfeasor." Monell v. Dep't. of Social Services, 436 U.S. 658, 691 (1978) (italics omitted). The Plaintiff must prove that the execution of a government policy or custom, "whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy," inflicted a deprivation of a constitutional right. See id. at 694. A government policy is established when a policymaker with final authority properly makes a decision to adopt a particular course of action. See Pembaur v.

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[2] Philadelphia Administrative Code Chapter 4A.-401.2.1: "Prior to entering into a space not otherwise open to the general public, the code official shall make a reasonable effort to locate the owner or other person having charge or control of the space or premises, present proper identification and request entry. Failure or refusal by the owner or other person in charge of the space or premises to permit such entry shall constitute a violation of this code. Such right of entry and inspection shall be enforced by application to and proper orders from a court of competent jurisdiction."

Cincinnati, 475 U.S. 469, 480 (1986). A government custom is informally adopted when the practices of state officials are so well-established as to constitute law. Andrews v. Philadelphia, 895 F.2d 1469, 1480 (3d Cir. 1990).

While it is clear that no city ordinance or regulation authorizes the conduct complained of and the Philadelphia Code requiring a warrant is evidence that the City does not have a policy or custom and ordinarily would not be liable. However, I decline at this time to grant summary judgment in favor of the City since there is evidence that the L&I employees routinely entered this particular property in disregard of Plaintiffs constitutional rights. At no time did the City admonish the employees or seek to correct the constitutionally violative behavior. This evidence of the acceptance of the conduct of the employees precludes the granting of summary judgment because a fact finder may find that the conduct of entering this house without a warrant was authorized.

Defendants last argument contends that Defendant McLaughlin is not liable because he was not personally involved in the three home invasions. A Defendant can only be held liable where he or she has personal involvement in the alleged wrongs. Sutton v. Rasheed, 323 F.2d 236, 249 (3d Cir. 2003). As to Commissioner McLaughlin, Defendants argue that he had no involvement in the day to day activities of L&I, showed no acquiescence, nor gave direction to the employees. Admittedly there is no evidence that McLaughlin personally entered or directed the entry into the property. However, the routine manner in which employees under McLaughlin entered the property, the fact that Supervisor Scuilli was reprimanded for refusing to enter the property, and the fact that McLaughlin as the Commissioner of L&I did not object to his

employees conduct is sufficient evidence of his possible involvement to deny the motion for summary judgment.

Finally, I turn to Plaintiffs' motion for summary judgment. Plaintiffs contend in their complaint that the conduct complained of constitutes a violation of Plaintiffs' Due Process, Equal Protection and First and Fourteenth Amendment rights. There are sufficient disputes as to the circumstances confronting L&I employees at the time of the three entries to preclude summary judgment. Inferences as to intent and motivation for the actions taken are for the fact finder to determine at trial and not for this Court on summary judgment. Plaintiffs' motion will be denied.

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Defendants.	:	

ORDER

GREEN, J. **March 4, 2005**

Presently pending are Plaintiffs' and Defendants' Motions for Summary Judgment. After consideration of all evidence presented, **IT IS HEREBY ORDERED** this 4th day of March, 2005 that all Motions are **DENIED**.

BY THE COURT:

S/Clifford Scott Green

CLIFFORD SCOTT GREEN, S.J.